



Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, May 14, 2015

Duke Energy Subsidiaries Plead Guilty and Sentenced to Pay \$102 Million for Clean Water Act Crimes

Three subsidiaries of North Carolina-based Duke Energy Corporation, the largest utility in the United States, pleaded guilty today to nine criminal violations of the Clean Water Act at several of its North Carolina facilities and agreed to pay a \$68 million criminal fine and spend \$34 million on environmental projects and land conservation to benefit rivers and wetlands in North Carolina and Virginia. Four of the charges are the direct result of the massive coal ash spill from the Dan River steam station into the Dan River near Eden, North Carolina, in February 2014. The remaining violations were discovered as the scope of the investigation broadened based on allegations of historical violations at the companies' other facilities.

Under the plea agreement, both Duke Energy Carolinas and Duke Energy Progress, must certify that they have reserved sufficient assets to meet legal obligations with respect to its coal ash impoundments within North Carolina, obligations estimated to be approximately \$3.4 billion.

Officials from the Justice Department's Environment and Natural Resources Division and the three U.S. Attorney's Offices in North Carolina, the Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance, EPA's Office of Inspector General, the Internal Revenue Service (IRS) Criminal Investigations and the North Carolina State Bureau of Investigation (SBI) made the announcement following a plea hearing at the federal courthouse in Greenville, North Carolina today.

"The massive coal ash spill into North Carolina's Dan River last year was a crime and it was the result of repeated failures by Duke Energy's subsidiaries to exercise controls over coal ash facilities," said Assistant Attorney General John C. Cruden of the Justice Department's Environment and Natural Resources Division. "The terms of these three plea agreements will help prevent this kind of environmental disaster from reoccurring in North Carolina and throughout the United States by requiring Duke subsidiaries to follow a rigorous and independently verifiable program to ensure they comply with the law."

"Duke Energy's crimes reflect a breach of the public trust and a lack of stewardship for the natural resources belonging to all of the citizens of North Carolina," said U.S. Attorney Thomas G. Walker for the Eastern District of North Carolina. "The massive release at the Dan River coal ash basin revealed criminal misconduct throughout the state – conduct that will no longer be tolerated under the judgment imposed by the court today."

"Duke's subsidiaries discharged potentially toxic pollutants that put at risk North Carolina's water quality and wildlife and today's outcome ensures they will be held responsible for violating federal environmental requirements," said Acting U.S. Attorney Jill W. Rose for the Western District of North Carolina. "The defendants will now have to comply with the terms imposed by the court, including paying hefty financial penalties and making significant financial contributions toward improving the quality of impacted waterways, wetlands and our water supply system."

"Duke's actions adversely impacted the Dan River ecosystem and caused residents who live near and rely on the water supply much apprehension about the safety of the river," said Criminal Chief Cliff Barrett for the U.S. Attorney's Office in the Middle District of North Carolina. "Today's plea holds Duke accountable for this result and charts a course to remediate the impact of these spills."

“Over two hundred sixteen million Americans rely on surface water as their source of drinking water,” said Assistant Administrator Cynthia Giles for EPA’s Office of Enforcement and Compliance Assurance. “Duke Energy put that precious resource at risk in North Carolina as the result of their negligence. Companies that cut corners and contaminate waters on which communities depend, as Duke did here, will be held accountable.”

On Feb. 20, 2015, the three U.S. Attorney’s Offices in North Carolina filed separate criminal bills of information in their respective federal courts, alleging violations of the Clean Water Act at the following Duke facilities: the Dan River steam station (Rockingham County), the Cape Fear steam electric plant (Chatham County), the Asheville steam electric generating plant (Buncombe County), the H.F. Lee steam electric plant (Wayne County) and the Riverbend steam station (Gaston County). The alleged violations included unlawfully failing to maintain equipment at the Dan River and Cape Fear facilities and unlawfully discharging coal ash and/or coal ash wastewater from impoundments at the Dan River, Asheville, Lee and Riverbend facilities.

As part of their plea agreements, Duke Energy Business Services LLC, Duke Energy Carolinas LLC and Duke Energy Progress Inc. will pay a \$68 million criminal fine and a total \$24 million community service payment to the National Fish and Wildlife Foundation for the benefit of the riparian environment and ecosystems of North Carolina and Virginia. The companies will also provide \$10 million to an authorized wetlands mitigation bank for the purchase of wetlands or riparian lands to offset the long-term environmental impacts of its coal ash basins. In addition, they will pay restitution to the federal, state and local governments that responded to the Dan River spill and be placed on a period of supervised probation for five years.

Duke’s subsidiaries operating 18 facilities in five states, including 14 in North Carolina, will also be required to develop and implement nationwide and statewide environmental compliance programs to be monitored by an independent court appointed monitor and be regularly and independently audited. Results of these audits will be made available to the public to ensure compliance with environmental laws and programs. The companies’ compliance will be overseen by a court-appointed monitor who will report findings to the court and the U.S. Probation Office as well as ensuring public access to the information.

Approximately 108 million tons of coal ash are currently held in coal ash basins owned and operated by the defendants in North Carolina. Duke Energy Corporation subsidiaries also operate facilities with coal ash basins in South Carolina, approximately 5.99 million tons of coal ash, Kentucky, approximately 1.5 million tons of coal ash, Indiana, approximately 35.6 million tons of coal ash and Ohio, approximately 5.9 million tons of coal ash.

The companies must also meet the obligations imposed under federal and state law to excavate and close coal ash impoundments at the Asheville, Dan River, Riverbend and Sutton facilities.

Additionally, at the insistence of the United States, the holding company Duke Energy Corporation has guaranteed the payment of the monetary penalties and the performance of the nationwide and statewide environmental compliance plans.

“Duke’s environmental crimes required a special financial review of their actions to which we were proud to join our partners in investigating,” said Special Agent in Charge Thomas J. Holloman, III of the IRS Criminal Investigation. “The considerable fines, formal apologies and massive cleanup initiatives will impact the Duke image and brand, assuring the public that corporations will be held accountable for their gross actions involving the environment, wildlife and the communities of this great state.”

“The SBI worked closely with the Environmental Protection Agency Criminal Investigation Division and the Internal Revenue Service in this matter,” said Acting Director B.W. Collier of the North Carolina SBI. “This type of collaboration is critical to ensuring a thorough and intensive review on cases such as this. The SBI remains committed to the public interest and is prepared to continue assisting the U.S. Attorney’s office.”

The criminal investigation was conducted by the Criminal Investigation Division, Region Four and the Office of Inspector General of EPA, Criminal Investigations of the IRS and North Carolina State Bureau of Investigation with assistance from the Federal Bureau of Investigation and the Department of Defense Criminal Investigative Service.